

153.7175 *****	....do..... *****	30..... *****	IW *****
153.7325 *****	....do..... *****	30..... *****	IW *****
154.4825 *****	Base or Mobile *****	30..... *****	*****
154.4975 154.505 *****	....do..... ....do..... *****	30..... 30..... *****	*****
154.5275 *****	Mobile *****	10, 30, 34. *****	*****
154.5475 *****	....do..... *****	30..... *****	*****
154.640 *****	....Base..... *****	30, 36, 37, 48. *****	*****
157.4775 *****	....do..... *****	12, 30. *****	LA *****
157.4925 *****	....do..... *****	12, 30. *****	LA *****
157.5075 *****	....do..... *****	12, 30. *****	LA *****
157.5225 *****	....do..... *****	12, 30. *****	LA *****
157.5375 *****	....do..... *****	6, 30. *****	*****
157.5525 *****	....do..... *****	6, 30. *****	*****
157.5675 *****	....do..... *****	6, 30. *****	*****
157.5825 *****	....do..... *****	6, 30.. *****	*****
157.5975 *****	....do..... *****	6, 30.. *****	*****

157.6125 *****	....do..... *****	6, 30.. *****	*****
157.6275 *****	....do..... *****	6, 30.. *****	*****
157.6425 *****	....do..... *****	6, 30.. *****	*****
157.6575 *****	....do..... *****	6, 30.. *****	*****
157.6725 *****	....do..... *****	6, 30.. *****	*****
157.6875 *****	....do..... *****	6, 30.. *****	*****
157.7025 *****	....do..... *****	6, 30.. *****	*****
157.7175 *****	....do..... *****	6, 30.. *****	*****
158.1375 *****	....do..... *****	30..... *****	IW *****
158.1525 *****	....do..... *****	30..... *****	IP, IW *****
158.1675 *****	....do..... *****	30..... *****	IP, IW *****
158.1825 *****	....do..... *****	30, 81. *****	IP, IW *****
158.1975 *****	....do..... *****	30..... *****	IW *****
158.2125 *****	....do..... *****	30, 81. *****	IP, IW *****
158.2275 *****	....do..... *****	30, 81. *****	IP, IW *****
158.2425 *****	....do..... *****	30, 81. *****	IP, IW *****

158.2575 *****	....do..... *****	30..... *****	IW *****
158.2725 *****	....do..... *****	30, 81. *****	IP, IW *****
158.2875 *****	....do..... *****	30..... *****	IP *****
158.3025 *****	....do..... *****	30..... *****	IP *****
158.3175 *****	....do..... *****	4, 7, 30. *****	IP *****
158.3325 *****	....do..... *****	30..... *****	IP *****
158.3475 *****	....do..... *****	30..... *****	*****
158.3625 *****	....do..... *****	30..... *****	IP *****
158.3775 *****	....do..... *****	4, 7, 30. *****	IP *****
158.3925 *****	....do..... *****	30..... *****	*****
158.4075 *****	....do..... *****	17, 30. *****	*****
158.4225 *****	....do..... *****	30..... *****	IP *****
158.4375 *****	....do..... *****	4, 7, 30. *****	IP *****
159.4875 *****	....do..... *****	8, 30. *****	IP *****
159.5025 *****	....do..... *****	30..... *****	*****
159.5175 *****	....do..... *****	30..... *****	*****

159.5325 *****	....do..... *****	30..... *****	*****
159.5475 *****	....do..... *****	30..... *****	*****
159.5625 *****	....do..... *****	30..... *****	*****
159.5775 *****	....do..... *****	30..... *****	*****
159.5925 *****	....do..... *****	30..... *****	*****
159.6075 *****	....do..... *****	30..... *****	*****
159.6225 *****	....do..... *****	30..... *****	*****
159.6375 *****	....do..... *****	30..... *****	*****
159.6525 *****	....do..... *****	30..... *****	*****
159.6675 *****	....do..... *****	30..... *****	*****
159.6825 *****	....do..... *****	30..... *****	*****
159.6975 *****	....do..... *****	30..... *****	*****
159.7125 *****	....do..... *****	30..... *****	*****
159.7275 *****	....do..... *****	30..... *****	*****
159.7425 *****	....do..... *****	30..... *****	*****
159.7575 *****	....do..... *****	30..... *****	*****

159.7725 *****	....do..... *****	30..... *****	*****
159.7875 *****	....do..... *****	30..... *****	*****
159.8025 *****	....do..... *****	30..... *****	*****
159.8175 *****	....do..... *****	30..... *****	*****
159.8325 *****	....do..... *****	30..... *****	*****
159.8475 *****	....do..... *****	30..... *****	*****
159.8625 *****	....do..... *****	30..... *****	*****
159.8775 *****	....do..... *****	30..... *****	*****
159.8925 *****	....do..... *****	30..... *****	*****
159.9075 *****	....do..... *****	30..... *****	*****
159.9225 *****	....do..... *****	30..... *****	*****
159.9375 *****	....do..... *****	30..... *****	*****
159.9525 *****	....do..... *****	30..... *****	*****
159.9675 *****	....do..... *****	30..... *****	*****
159.9825 *****	....do..... *****	30..... *****	*****

159.9975 *****	....do..... *****	30..... *****	*****
160.0125 *****	....do..... *****	30..... *****	*****
160.0275 *****	....do..... *****	30..... *****	*****
160.0425 *****	....do..... *****	30..... *****	*****
160.0575 *****	....do..... *****	30..... *****	*****
160.0725 *****	....do..... *****	30..... *****	*****
160.0875 *****	....do..... *****	30..... *****	*****
160.1025 *****	....do..... *****	30..... *****	*****
160.1175 *****	....do..... *****	30..... *****	*****
160.1325 *****	....do..... *****	30..... *****	*****
160.1475 *****	....do..... *****	30..... *****	*****
160.1625 *****	....do..... *****	30..... *****	*****
160.1775 *****	....do..... *****	30..... *****	*****
160.1925 *****	....do..... *****	30..... *****	*****
160.2075 *****	....do..... *****	30..... *****	*****
160.2225 *****	....do..... *****	30, 50. *****	LR *****
160.2375 *****	....do..... *****	30, 50. *****	LR *****

160.2525 *****	....do..... *****	30, 50. *****	LR *****
160.2675 *****	....do..... *****	30, 50. *****	LR *****
160.2825 *****	....do..... *****	30, 50. *****	LR *****
160.2975 *****	....do..... *****	30, 50. *****	LR *****
160.3125 *****	....do..... *****	30, 50. *****	LR *****
160.3275 *****	....do..... *****	30, 50. *****	LR *****
160.3425 *****	....do..... *****	30, 50. *****	LR *****
160.3575 *****	....do..... *****	30, 50. *****	LR *****
160.3725 *****	....do..... *****	30, 50. *****	LR *****
160.3875 *****	....do..... *****	30, 50. *****	LR *****
160.4025 *****	....do..... *****	30, 50. *****	LR *****
160.4175 *****	....do..... *****	30, 50, 52. *****	LR *****
160.4325 *****	....do..... *****	30, 50, 52. *****	LR *****
160.4475 *****	....do..... *****	30, 50, 52. *****	LR *****
160.4625 *****	....do..... *****	30, 50, 52. *****	LR *****
160.4775 *****	....do..... *****	30, 50, 52. *****	LR *****

160.4925 *****	....do..... *****	30, 50, 52. *****	LR *****
160.5075 *****	....do..... *****	30, 50, 52. *****	LR *****
160.5225 *****	....do..... *****	30, 50, 52. *****	LR *****
160.5375 *****	....do..... *****	30, 50, 52. *****	LR *****
160.5525 *****	....do..... *****	30, 50, 52. *****	LR *****
160.5675 *****	....do..... *****	30, 50, 52. *****	LR *****
160.5825 *****	....do..... *****	30, 50, 52. *****	LR *****
160.5975 *****	....do..... *****	30, 50, 52. *****	LR *****
160.6125 *****	....do..... *****	30, 50, 52. *****	LR *****
160.6275 *****	....do..... *****	30, 50. *****	LR *****
160.6425 *****	....do..... *****	30, 50. *****	LR *****
160.6575 *****	....do..... *****	30, 50. *****	LR *****
160.6725 *****	....do..... *****	30, 50. *****	LR *****
160.6875 *****	....do..... *****	30, 50. *****	LR *****
160.7025 *****	....do..... *****	30, 50. *****	LR *****
160.7175 *****	....do..... *****	30, 50. *****	LR *****



160.7325 *****	....do..... *****	30, 50. *****	LR *****
160.7475 *****	....do..... *****	30, 50. *****	LR *****
160.7625 *****	....do..... *****	30, 50. *****	LR *****
160.7775 *****	....do..... *****	30, 50. *****	LR *****
160.7925 *****	....do..... *****	30, 50. *****	LR *****
160.8075 *****	....do..... *****	30, 50. *****	LR *****
160.8225 *****	....do..... *****	30, 50. *****	LR *****
160.8375 *****	....do..... *****	30, 50. *****	LR *****
160.8525 *****	....do..... *****	30, 50. *****	LR *****
160.8675 *****	....do..... *****	30, 50, 51. *****	LR *****
160.8825 *****	....do..... *****	30, 50, 51. *****	LR *****
160.8975 *****	....do..... *****	30, 50, 51. *****	LR *****
160.9125 *****	....do..... *****	30, 50, 51. *****	LR *****
160.9275 *****	....do..... *****	30, 50, 51. *****	LR *****
160.9425 *****	....do..... *****	30, 50, 51. *****	LR *****
160.9575 *****	....do..... *****	30, 50, 51. *****	LR *****

160.9725 *****	....do..... *****	30, 50, 51. *****	LR *****
160.9875 *****	....do..... *****	30, 50, 51. *****	LR *****
161.0025 *****	....do..... *****	30, 50, 51. *****	LR *****
161.0175 *****	....do..... *****	30, 50, 51. *****	LR *****
161.0475 *****	....do..... *****	30, 50, 51. *****	LR *****
161.0625 *****	....do..... *****	30, 50, 51. *****	LR *****
161.0775 *****	....do..... *****	30, 50, 51. *****	LR *****
161.0925 *****	....do..... *****	30, 50, 51. *****	LR *****
161.1075 *****	....do..... *****	30, 50, 51. *****	LR *****
161.1225 *****	....do..... *****	30, 50, 51. *****	LR *****
161.1375 *****	....do..... *****	30, 50, 51. *****	LR *****
161.1525 *****	....do..... *****	30, 50, 51. *****	LR *****
161.1675 *****	....do..... *****	30, 50, 51. *****	LR *****
161.1825 *****	....do..... *****	30, 50, 51. *****	LR *****
161.1975 *****	....do..... *****	30, 50, 51. *****	LR *****
161.2125 *****	....do..... *****	30, 50, 51. *****	LR *****

161.2275 *****	....do..... *****	30, 50, 51. *****	LR *****
161.2425 *****	....do..... *****	30, 50, 51. *****	LR *****
161.2575 *****	....do..... *****	30, 50, 51. *****	LR *****
161.2725 *****	....do..... *****	30, 50, 51. *****	LR *****
161.2875 *****	....do..... *****	30, 50, 51. *****	LR *****
161.3025 *****	....do..... *****	30, 50, 51. *****	LR *****
161.3175 *****	....do..... *****	30, 50, 51. *****	LR *****
161.3325 *****	....do..... *****	30, 50, 51. *****	LR *****
161.3475 *****	....do..... *****	30, 50, 51. *****	LR *****
161.3625 *****	....do..... *****	30, 50, 51. *****	LR *****
161.3775 *****	....do..... *****	30, 50, 51. *****	LR *****
161.3925 *****	....do..... *****	30, 50, 52. *****	LR *****
161.4075 *****	....do..... *****	30, 50, 52. *****	LR *****
161.4225 *****	....do..... *****	30, 50, 52. *****	LR *****
161.4375 *****	....do..... *****	30, 50, 52. *****	LR *****
161.4525 *****	....do..... *****	30, 50, 52. *****	LR *****

161.4675 *****	....do..... *****	30, 50, 52. *****	LR *****
161.4825 *****	....do..... *****	30, 50, 52. *****	LR *****
161.4975 *****	....do..... *****	30, 50, 52. *****	LR *****
161.5125 *****	....do..... *****	30, 50, 52. *****	LR *****
161.5275 *****	....do..... *****	30, 50, 52. *****	LR *****
161.5425 *****	....do..... *****	30, 50, 52. *****	LR *****
161.5575 *****	....do..... *****	30, 50, 52. *****	LR *****

\*\*\*\*\*

(c) \*\*\*\*\*

(29) This frequency will be authorized a channel bandwidth of 25 kHz. Except when limited elsewhere, one-way paging transmitters on this frequency may operate with an output power of 350 watts.

(30) This frequency will be assigned with an authorized bandwidth not to exceed 11.25 kHz. In the 450-470 MHz band, secondary telemetry operations pursuant to § 90.238(e) will be authorized on this frequency.

4. Section 90.203 is amended by redesignating current paragraphs (j)(6)-(10) as (j)(7)-(11), adding new paragraphs (j)(4)(iii), (j)(4)(iv), (j)(6), (j)(6)(i), (j)(6)(ii), and (j)(6)(iii), and revising paragraphs (j)(4)(ii), (j)(8) [as redesignated], and (j)(11) [as redesignated] to read as follows:

#### § 90.203 Certification required.

\*\*\*\*\*

(j) \*\*\*\*\*

(2) Applications for certification received on or after February 14, 1997 but before January 1, 2005 will only be granted for equipment with the following channel bandwidths:

\*\*\*\*\*

(3) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150-174 MHz and/or 421-512 MHz bands, received on or after February 14, 1997, but before January 1, 2005, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25

kHz of channel bandwidth.

\* \* \* \* \*

(4) \* \* \* \* \*

(ii) 12.5 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 12.5 kHz if it is capable of operating on channels of 6.25 kHz or less;

(iii) 25 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 25 kHz if it is capable of operating on channels of 6.25 kHz or less; and

(iv) Up to 25 kHz if the equipment meets the efficiency standard of paragraph (j)(5) of this section.

\* \* \* \* \*

(6) Applications for certification received on or after January 1, 2011, except for hand-held transmitters with an output power of two watts or less, will only be granted for equipment with the following channel bandwidths:

(i) 6.25 kHz or less for single bandwidth mode equipment;

(ii) 12.5 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 12.5 kHz if it is capable of operating on channels of 6.25 kHz or less; and

(iii) Up to 25 kHz if the equipment meets the efficiency standard of paragraph (j)(5) of this section.

\* \* \* \* \*

(8) Transmitters designed only for one-way paging operations in

\* \* \* \* \*

(11) Except as provided below, single-mode and multi-mode transmitters designed to operate in the 150-174 MHz and 421-512 MHz bands that operate with a maximum channel bandwidth greater than 12.5 kHz shall not be manufactured in, or imported into, the United States after January 1, 2011, except as noted below:

(a) to the extent that the equipment meets the efficiency standard of paragraph (j)(3) of this section, or

(b) where operation with a bandwidth greater than 12.5 kHz is specified elsewhere.

\* \* \* \* \*

5. Section 90.209 is amended by revising footnote 3 in the table in paragraph (b)(5) and revising paragraph (b)(6) to read as follows:

**§ 90.209 Bandwidth limitation.**

\* \* \* \* \*

(b) \* \* \* \* \*

(5) \* \* \* \* \*

/3/ Operations using equipment using a 25 kHz bandwidth will be authorized a 20 kHz bandwidth. Operations using equipment designed to operate with a 12.5 kHz channel bandwidth will be authorized an 11.25 kHz bandwidth. Operations using equipment designed to operate with a 6.25 kHz channel bandwidth will be authorized a 6 kHz bandwidth. All stations must operate on channels with a bandwidth of 12.5 kHz or less beginning January 1, 2013, unless the operations meet the efficiency standard of section 90.203(j)(3) of this chapter, or unless specified elsewhere.

\* \* \* \* \*

(6)(i) Beginning January 1, 2011, no new applications for the 150-174 MHz and/or 421-512 MHz bands will be acceptable for filing if the applicant utilizes channels with an authorized bandwidth exceeding 11.25 kHz, unless specified elsewhere or the operations meet the efficiency standards of

section 90.203(j)(3) of this chapter.

(ii) Beginning January 1, 2011, no modification applications for stations in the 150-174 MHz and/or 421-512 MHz bands that increase the station's authorized interference contour, will be acceptable for filing if the applicant utilizes channels with an authorized bandwidth exceeding 11.25 kHz, unless specified elsewhere or the operations meet the efficiency standards of section 90.203(j)(3) of this chapter. See § 90.187(b)(2)(iii) and (iv) of this chapter for interference contour designations and calculations. Applications submitted pursuant to this paragraph must comply with frequency coordination requirements of § 90.175 of this chapter.

\* \* \* \* \*

## APPENDIX C – SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),<sup>138</sup> a Final Regulatory Flexibility Analysis (RFA) was incorporated in the *Second Report and Order and Second Further Notice of Proposed Rule Making (Second R&O and Second Further Notice)*<sup>139</sup> in WT Docket 99-87. The Commission sought written public comment on the proposals in the 2<sup>nd</sup> FNPRM. In view of the fact that we have adopted further rule amendments in this *Third Memorandum Opinion and Order*, we have included this Supplemental Final Regulatory Flexibility Analysis (SFRFA). This Supplemental Final Regulatory Flexibility Analysis (SFRFA) conforms to the RFA.<sup>140</sup>

### Reason for, and Objectives of, the *Third Memorandum Opinion and Order*:

The *Third Memorandum Opinion and Order (Third MO&O)* adopts rules to promote the transition to narrowband technology in bands 150-174 MHz and 421-512 MHz. Specifically, we amend our rules to impose a deadline for migration to 12.5 kHz technology for both Public Safety Radio Pool and Industrial/Business Radio Pool licensees operating Private Land Mobile Radio Service (PLMRS) systems on those bands, beginning January 1, 2013. In addition, we amend our rules to prohibit the certification of any equipment capable of operating at one voice path per 25 kHz of spectrum, *i.e.*, multi-mode equipment that includes a 25 kHz mode, beginning January 1, 2011. We also prohibit the manufacture and importation of 25 kHz equipment (including multi-mode equipment that can operate on a 25 kHz bandwidth) beginning January 1, 2011. We will permit all licensees operating on these bands to modify existing systems, including modifications that expand coverage area, with 25 kHz equipment until January 1, 2011. No later than December 31, 2009 the Commission will issue a Public Notice of the impending January 1, 2011 deadline for filing new applications and modifications of any systems utilizing 25 kHz channels. This notice will also inform the public of the frequency coordinators cutoff date for accepting said applications. The Public Notice will also serve as a reminder that all Public Safety Radio Pool and Industrial/Business Radio Pool licensees are required to migrate to 12.5 kHz by January 1, 2013. These actions will effect a transition to a narrowband channel plan. The resulting gain in efficiency will ease congestion on the PLMRS channels in these bands.

### Summary of Significant Issues Raised by Public Comments in Response to the FRFA:

No comments or reply comments were filed in direct response to the FRFA. The Commission has, however, reviewed the general comments that may impact small businesses. Much of the potential impact on small businesses arises from the mandatory migration to 12.5 kHz technology beginning on January 1, 2011, the ban on importation and manufacture of 25 kHz equipment after January 1, 2011 and the freeze on new 25 kHz applications. The costs associated with replacement of current

<sup>138</sup> See U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>139</sup> Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended: Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz; Petition for Rule Making of the American Mobile Telecommunications Association, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-87, RM-9332, RM-9405, RM-9705, 15 FCC Rcd 22709 (1999) (“*R&O and FNPRM*”).

<sup>140</sup> See 5 U.S.C. § 604.

systems were cited in opposition to mandatory conversion proposals.

### **Description and Estimate of the Number of Small Entities to Which the Rules Apply:**

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>141</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>142</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>143</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>144</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>145</sup>

The rule changes effectuated by this 3<sup>rd</sup> MO&O apply to licensees and applicants of private land mobile frequencies in the 150-174 MHz and 421-512 MHz bands, and to manufactures of radio equipment.

*Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a vast range of industrial, business, land transportation and public service activities. These radios are used by companies of all sizes that operate in all U.S. business categories. Because of the vast array of PLMR users, the Commission had not developed, nor would it be possible to develop, a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,087,276 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz.<sup>146</sup> Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

*Public Safety.* Public Safety Radio Pool services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services.<sup>147</sup> The SBA rules contain a

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<sup>141</sup> See 5 U.S.C. § 601(6).

<sup>142</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.

<sup>143</sup> Small Business Act, 5 U.S.C. § 632 (1996).

<sup>144</sup> 5 U.S.C. § 601(4).

<sup>145</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the Small Business Administration).

<sup>146</sup> See Federal Communications Commission, 60<sup>th</sup> Annual Report, Fiscal Year 1994 at 120-121.

<sup>147</sup> With the exception of the special emergency service, these services are governed by Subpart B of Part 90 of the Commission's rules. 47 C.F.R. §§ 90.15 through 90.27. The police service includes 26,608 licensees that serve (continued....)



definition for small radiotelephone (wireless) companies, which encompass business entities engaged in radiotelephone communications employing no more than 1,500 persons.<sup>148</sup> There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.<sup>149</sup> "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>150</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>151</sup> This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>152</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (96 percent) are small entities.

*Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.<sup>153</sup> Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.<sup>154</sup>

#### **Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:**

(Continued from previous page)

state, county and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the actual delivery of emergency medical treatment. 47 C.F.R. §§ 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities and emergency repair of public communication facilities. 47 C.F.R. §§ 90.33 through 90.55.

<sup>148</sup> See 13 C.F.R. § 121.201 (NAICS Codes 513321, 513322, 513330).

<sup>149</sup> See 5 U.S.C. § 601(5) (including cities, counties, towns, townships, villages, school districts, or special districts).

<sup>150</sup> 5 U.S.C. § 601(5).

<sup>151</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>152</sup> *Id.*

<sup>153</sup> 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 3663.

<sup>154</sup> U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC 3663.

This *Third MO&O* adopts rules to promote the transition to narrowband technology for private land mobile licensees, in the 150-174 MHz and 421-512 MHz bands. In particular, applications for operations on 25 kHz equipment will be accepted until January 1, 2011. We will permit all licensees operating on these bands to modify existing systems, including modifications that expand coverage area, with 25 kHz equipment until January 1, 2011. No later than December 31, 2009 the Commission will issue a Public Notice of the impending January 1, 2011 deadline for filing new applications and modifications of any systems utilizing 25 kHz channels. This notice will also inform the public of the frequency coordinators cutoff date for accepting said applications. The Public Notice will also serve as a reminder that all Public Safety Radio Pool and Industrial/Business Radio Pool licensees are required to migrate to 12.5 kHz by January 1, 2013. Further, this *Third MO&O* amends our current rules to prohibit the importation or manufacture of 25 kHz-only equipment beginning on January 1, 2011. All equipment utilized on or after January 1, 2013 must utilize a maximum channel bandwidth of 12.5 kHz, or meet the narrowband efficiency standard of one channel per 6.25 kHz (voice) or 4800 bits per second per 6.25 kHz (data).

#### **Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered:**

The FRFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>155</sup>

The Commission adopted rules in this *Third MO&O* upon consideration of the economic burden on small businesses. For instance, many commenters supported adoption of rules that would require conversion of Industrial/Business Radio Pool licensees to 12.5 kHz equipment as early as January 1, 2008. Such a proposal fails to give any consideration to the amortization and life-span of current equipment and the resources available to small entities. Rather than require small business licensees to convert its system to 12.5 kHz or equivalent technology beginning on January 1, 2008, we retain our current rules governing mandatory migration to 12.5 kHz or equivalent technology until January 1, 2013 for Industrial/Business Radio Pool systems. Likewise, for Public Safety Radio Pool systems, many commenters supported adoption of rules that would require conversion of Public Safety Radio Pool systems to 12.5 kHz equipment as early as January 1, 2013. In recognizing the need for clarity and uniformity in a single final migration date, and in consideration of the development and readiness of public safety operators in general, we amend our rules to accelerate the mandatory migration to 12.5 kHz or equivalent technology to January 1, 2013 for INDUSTRIAL/Business Radio Pool PLMR systems. We rejected a phased approach that would have burdened licensees to determine which market and which date applied to them. We also rejected an approach that would assign different migration dates based on definitional concepts of urban or rural. Although we employ intermediary steps to promote migration to 12.5 kHz equipment, we believe that delaying the effective dates of these interim measures closer to the final migration date adopted herein will best facilitate a complete and seamless migration to 12.5 kHz narrowband equipment. We declined to initiate a plan at this time to mandate a further migration to narrowband equipment based on a 6.25 kHz standard as premature. Exemption from coverage of the rule changes for small businesses would frustrate the purpose of the rule, *i.e.*, migration to more efficient spectrum use, and facilitate

<sup>155</sup> See 5 U.S.C. § 603(c).

continued inefficient use of spectrum.

**Report to Congress:**

The Commission will send a copy of this *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, including this SFRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order* and SFRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).



## APPENDIX D – INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act ("RFA"),<sup>156</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Further Notice of Proposed Rule Making* ("*Third Further Notice*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this Further Notice provided above in paras. 52-55, *supra*. The Commission will send a copy of the *Third Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").<sup>157</sup> In addition, the *Third Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>158</sup>

### Need for, and Objectives of, the Proposed Rules:

The purpose of this *Third Further Notice* is to determine whether it would be in the public interest, convenience, and necessity to amend our rules governing private land mobile radio licensees in the 150-174 MHz and 421-512 MHz bands to modify or eliminate the requirement in Section 90.203(j)(5) of our Rules that require applications for certification of equipment received on or after January 1, 2005 operating with a 25 kHz bandwidth only to the extent that the equipment meets the spectrum efficiency standard of one channel per 6.25 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data).

### Legal Basis:

Authority for issuance of this *Third Further Notice* is contained in Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended.<sup>159</sup>

### Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>160</sup> Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions.<sup>161</sup> The RFA generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act.<sup>162</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any

<sup>156</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>157</sup> See 5 U.S.C. § 603(a).

<sup>158</sup> See *id.*

<sup>159</sup> 47 U.S.C. §§ 154(i), 303(r), 332(a)(2).

<sup>160</sup> See 5 U.S.C. § 603(b)(3).

<sup>161</sup> See 5 U.S.C. § 601(6).

<sup>162</sup> Compare 5 U.S.C. § 601(3) (RFA) with 15 U.S.C. § 632 (SBA).

additional criteria established by the SBA.<sup>163</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>164</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>165</sup>

The proposed rule amendments may affect users of Public Safety Radio Pool services and private radio licensees that are regulated under Part 90 of the Commission's rules, and may also affect manufacturers of radio equipment. An analysis of the number of small entities affected follows.

*Public safety services and Governmental entities.* Public safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services.<sup>166</sup> The SBA rules contain a definition for small radiotelephone (wireless) companies that encompass business entities engaged in radiotelephone communications employing no more than 1,500 persons.<sup>167</sup> There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.<sup>168</sup> "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>169</sup> As of 1992, there were approximately 85,006 such jurisdictions in the United States.<sup>170</sup> This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than

<sup>163</sup> Small Business Act, 5 U.S.C. § 632 (1996).

<sup>164</sup> 5 U.S.C. § 601(4).

<sup>165</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the Small Business Administration).

<sup>166</sup> With the exception of the special emergency service, these services are governed by Subpart B of Part 90 of the Commission's rules. 47 C.F.R. §§ 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the actual delivery of emergency medical treatment. 47 C.F.R. §§ 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities and emergency repair of public communication facilities. 47 C.F.R. §§ 90.33 through 90.55.

<sup>167</sup> See 13 C.F.R. § 121.201 (SIC Code 4812).

<sup>168</sup> See 5 U.S.C. § 601(5) (including cities, counties, towns, townships, villages, school districts, or special districts).

<sup>169</sup> 5 U.S.C. § 601(5).

<sup>170</sup> U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

50,000.<sup>171</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (96 percent) are small entities.

*Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies.<sup>172</sup> Included in this definition are business entities engaged in radiotelephone communications employing no more than 1,500 persons.<sup>173</sup> Entities engaged in telegraph and other message communications with no more than \$5 million in annual receipts also qualify as small business concerns.<sup>174</sup> According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.<sup>175</sup>

*Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.<sup>176</sup> Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.<sup>177</sup>

#### **Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:**

This *Third Further Notice* stays the January 1, 2005 date in Section 90.203(j)(5) pending resolution of the issues presented in the *Second Further Notice* and the Petition to Defer. Therefore, the *Third Further Notice* removes any administrative or recordkeeping burdens associated with the requirement that applications for certification of equipment received on or after January 1, 2005 operating with a 25 kHz bandwidth will be permitted only to the extent that the equipment meets the spectrum efficiency standard of one channel per 6.25 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data) pursuant to Section 90.203 (j)(5) of the Commission's Rules.

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<sup>171</sup> *Id.*

<sup>172</sup> See 13 C.F.R. § 121.201 (SIC Code 4812).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* (SIC Code 4822).

<sup>175</sup> See Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120-121.

<sup>176</sup> 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 3663.

<sup>177</sup> U.S. Dept. of Commerce, 1992 *Census of Transportation, Communications and Utilities* (issued May 1995). SIC 3663.

**Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:**

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule or any part thereof for small entities.<sup>178</sup>

The objective in the *Refarming* proceeding was to provide a means to transition licensees to 6.25 kHz technology. Migration to 12.5 kHz technology was viewed as a stepping stone to operation at 6.25 kHz technology, *see id.* However, requiring the use of 6.25 kHz technology by a date certain could impact some small entities requiring them to upgrade their communications systems before they would otherwise do so. An alternative would be to maintain the current rules, which are intended to foster migration to narrowband technology by way of progressively more stringent type certification requirements. We issue this *Third Further Notice* to stay the effectiveness of Section 90.203(j)(5) and thereby ensure that a January 1, 2005 deadline would not injure any party while we consider whether a change in the Rules would benefit small entities and other PLMR licensees.

**Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules:**

None.

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<sup>178</sup> See 5 U.S.C. §603(c).